

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Deny

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/392, 243 09/09/99 LEE

J 27338

EXAMINER

HM12/1025

HOVEY WILLIAMS TIMMONS AND COLLINS
SUITE 400
2405 GRAND
KANSAS CITY MO 64108

PRATS, F	ART UNIT	PAPER NUMBER
----------	----------	--------------

1651
DATE MAILED:

10/25/01

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/392,243	LEE ET AL.
	Examiner Francisco C Prats	Art Unit 1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 June 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-35 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) 1-35 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Claims 1-35 are presented for examination.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to the preparation of a heparin/peptone hydrolysate, classified in class 435, subclass 68.1.
- II. Claims 14-16, drawn to the preparation of a peptone hydrolysate, classified in class 435, subclass 68.1.
- III. Claims 17-20, drawn to the preparation of protein hydrolysate, classified in class 435, subclass 68.1
- IV. Claims 21-27, drawn to a method of preserving mucosa, classified in class 435, subclass 1.1.
- V. Claims 28-32, drawn to preserved mucosa, classified in class 435, subclass 1.1.
- VI. Claim 33, drawn to a heparin/peptone hydrolysate, classified in class 424, subclass 543.
- VII. Claim 34, drawn to a peptone hydrolysate, classified in class 424, subclass 520.
- VIII. Claim 35, drawn to a protein hydrolysate, classified in class 424, subclass 520.

Art Unit: 1651

The inventions are distinct, each from the other because of the following reasons:

Inventions I through IV are related to inventions VI, VII, VIII and V, respectively, as processes of making and products made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)).

In the instant case each of the hydrolysate products can be made by materially different processes. For example, chemical hydrolysis steps can be substituted for the enzymatic hydrolysis steps, and enzymatic hydrolysis steps can be substituted for the chemical steps. Moreover, the preserved mucosa product can be prepared by freezing in the presence of a cryopreservative.

Inventions I through IV are unrelated processes. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are directed to the production of entirely different products using different process steps. For example,

Art Unit: 1651

group I requires the presence of heparin, whereas none of other groups require it. Group II requires only an acidic hydrolysis, whereas groups I and III require enzymatic hydrolysis. Group IV requires entirely different starting materials and entirely different process steps. Thus, each of the different processes clearly has a different mode of operation, function and effect.

Inventions V though VIII are unrelated products.

Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different product inventions require the presence of different ingredients which have been treated under different conditions. Thus, the different products clearly and necessarily have different modes of operation, functions and effects.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and different classifications, restriction for examination purposes as indicated is proper.

Claims 1, 14 and 17 are generic to a plurality of disclosed patentably distinct species comprising numerous "protein-containing materials" recited in claims 12, 15 and 18. Thus, if

Art Unit: 1651

applicant elects invention I through III or VI through VIII, applicant is required under 35 U.S.C. 121 to elect a **single** disclosed species of protein-containing material from among those recited in claims 12, 15 and 18, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

Art Unit: 1651

remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francisco C Prats whose telephone number is 703-308-3665. The examiner can normally be reached on Monday through Friday, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


Francisco C Prats
Primary Examiner
Art Unit 1651

FCP
October 24, 2001